

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Stephane Cayla, et al.	§	Art Unit:	2617
		§		
Serial No.:	10/810,507	§		
		§	Examiner:	Jean Alland Gelin
Filed:	March 26, 2004	§		
		§		
For:	A Radio Telecommunications	§	Atty. Dkt. No.:	BGC.0002US
	System and method of	§		(N2325-US)
	Operating the Same with	§		
	Polling	§		

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The obviousness rejection of independent claims 1, 13, and 15 over Haartsen and Helferich is clearly erroneous.

To make a determination under 35 U.S.C. § 103(a), several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as the U.S. Supreme Court held, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

Date of Deposit:	<u>July 3, 2008</u>
I hereby certify that this correspondence is being electronically transmitted to the U.S. Patent Office on the date indicated above.	
<u>Ginger Yount</u>	
Ginger Yount	

Here, a comparison of the claimed subject matter with the teachings of Haartsen and Helferich will reveal that the claimed subject matter is significantly different from the teachings of the cited references. In fact, even if, hypothetically, one were to combine the teachings of Haartsen with those of Helferich, one would not arrive at the claimed subject matter.

As conceded by the Examiner, Haartsen fails to disclose the means for transmitting polling messages to the user equipment to request that the user equipment acknowledges receipt of the second data blocks. 4/7/2008 Office Action at 3. However, the Examiner relied upon Helferich as disclosing the claimed subject matter missing from Haartsen. *Id.* Specifically, the Examiner cited a passage in Helferich found at col. 8, lines 17-65. The cited passage of Helferich refers to a paging system 30 issuing a page call through a base station 34 to a pager 100. After issuing the page call, the paging system 30 determines whether an acknowledgment has been received from the pager 100.

However, sending a page and then waiting to see if the page was acknowledged by the recipient, as taught by Helferich, is completely different from the claimed subject matter, which relates to transmitting second data blocks to the user equipment, and transmitting polling messages (**after** transmitting **the** second data blocks) to the user equipment to request that the user equipment acknowledges receipt of the second data blocks. Acknowledgment of a page by a recipient, as taught by Helferich, does not differ from any conventional acknowledgment mechanism. The claimed invention relates to something quite different from the teachings of Haartsen and Helferich, namely that polling messages are sent to user equipment to request that the user equipment acknowledge data blocks sent to the user equipment, with the polling messages sent **after** sending the data blocks to the user equipment, and with a polling interval for transmission of such polling messages set dynamically according to one or more of the criteria specified in claim 1.

The Response to Arguments section of the 4/7/2008 Office Action responded to the arguments presented by Applicant above by citing column 2, lines 5-40, of Helferich, which describes paging transceivers that are able to transmit acknowledgment signals back through the paging system. Again, this refers to conventional acknowledgment mechanisms in which pages are sent, followed by the sender waiting for an acknowledgment. In fact, column two of Helferich further states that if a base station does not receive an acknowledgment of a page, the

base station will simply re-transmit the page. Helferich, 2:20-24. This is a classic example of conventional page/acknowledge procedures, and is quite different from the claimed invention.

The Examiner further cited column 8, lines 18-67, of Helferich in the Response to Arguments section of the 4/7/2008 Office Action. This is the same passage cited by the Examiner in the main text of the final Office Action, and simply refers to a base station issuing a page and waiting for an acknowledgement.

In view of the foregoing, it is clear that even if Haartsen and Helferich could be hypothetically combined, their hypothetical combination would not have led to the claimed subject matter and, in fact, would have led to subject matter significantly different from the claimed subject matter.

Moreover, it is respectfully submitted that no reason existed that would have prompted a person of ordinary skill in the art to combine the teachings of Haartsen and Helferich. *See KSR*, 127 S. Ct. at 1741.

Haartsen describes a polled communication system in which a master device periodically polls each of the slaves in the system. The purpose of the poll is to give a slave permission to send data as part of a scheduling protocol. *See* Haartsen, 8:67-9:4 (“The master has....complete control over which slave can send information because a slave cannot transmit unless it is polled in a preceding slot.”). A slave is polled even if it has no data to send. *See id.*, 9:4-7 (“If the master has no information to send to the slave, it is preferable for the master still to occasionally poll the slave for the purpose of finding out whether the slave has information to send.”). Thus, Haartsen is completely un-related to sending polling messages to request a user equipment acknowledge receipt of data blocks sent to the user equipment. In fact, the concept of acknowledgment is completely irrelevant in Haartsen, since the master polls the slave to cause the slave to send data to the master, as part of the scheduling protocol of Haartsen. Since the master has asked the slave to send the data, it would be completely unnecessary, and in fact, wasteful of bandwidth resources, for the slave to send acknowledgments.

In contrast, Helferich relates to a paging system paging a pager, and determining whether the pager has acknowledged the page. The concept of a pager acknowledging a page is completely un-related to the scheduling protocol described in Haartsen.

In view of the foregoing, it is clear that no reason existed that would have prompted a person of ordinary skill in the art to combine Haartsen and Helferich to achieve the claimed invention.

Therefore, it is respectfully submitted that the obviousness rejection of claim 1 is defective and that claim 1 is clearly allowable over Haartsen and Helferich.

Independent claims 13 and 15 are similarly allowable over Haartsen and Helferich.

Dependent claims are allowable for at least the same reasons as corresponding independent claims. In view of the defective obviousness rejection of base claims over Haartsen and Helferich, it is respectfully submitted that the obviousness rejection of dependent claims over Haartsen, Helferich, and Schoch has also been overcome.

In view of the foregoing, withdrawal of the final rejections and allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (BGC.0002US).

Respectfully submitted,

Date: \_\_\_\_\_

*Jul 3, 2008*



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